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V. REMARKS

Concurrently with the response to the Restriction Requirement, Applicants have amended the specification herein to correct the identification of the amino acid sequences. Additionally, Claims 10-13 were withdrawn from consideration under 35 U.S.C. § 101 as improper "use" claims and therefore, nonstatutory subject matter. Claims 10-13 are cancelled herein. New claims 14-19 directed to recite statutory subject matter and based on previous claims 10-13 have been added. No new matter has been added via this amendment.

In the Office Action dated August 28, 2007, the Examiner has set forth a Restriction Requirement under 35 U.S.C. § 121, alleging that the subject matter defined by the claims of the present invention represent the following six groups of inventions:

A) VIP (corresponding to SEQ ID NO:1)

B) analogue derivative of VIP

C) ACHPA-38 (corresponding to SEQ ID NO:2)

D) analogue derivative of ACHPA-38

E) ACPHA-27 (corresponding to SEQ ID NO:3)

F) analogue derivative of ACHPA-27

The Examiner believes the groups do not relate to a single general inventive concept. Claims 1, 4 and 7 have been identified as generic.

The Examiner bases her restriction requirement on a lack of the same or corresponding "special technical features" as defined under PCT Rule 13.2. The Examiner states that the uniting feature is a method of treating endotoxic shock and therefore, does not contribute over prior art. The Examiner further states that no special technical feature exists in the present application. The Examiner believes the groups are each patentably distinct species.

Applicant respectfully traverses this requirement.

In particular, it is respectfully submitted that the Ashkenazi, *et al* reference (Proc. Nat'l Acad. Sci. 88:10535-10539, 1991) does not disclose several features of claim 1, including the fact that the present invention "inhibits the production of tumoral necrosis factor (TNF)."

In the Ashkenazi reference, the protection against endotoxic shock is via binding of TNF receptors via a TNF receptor immunoadhesion. Therefore, the mechanism is not prevention of TNF production but rather binding of existing TNF. Additionally, the reference does not address inhibition of interleukin 6 production as in claim 4, activation of Th1 cells as in claim 7, or induction of high levels of IL-4 as in claim 7.

It is respectfully submitted that all of the pending claims of the present invention are directed to the same general inventive concept and Ashkenazi does not disclose these features at all.

Additionally, groups a and b, c and d, and e and f are related as sequences and their analogue derivatives. Dividing the present application into 6 applications is unduely burdensome to the Applicant.

Applicants respectfully suggest that in view of the continued increase of official fees and the potential limitation of an applicant's financial resources, a practice which arbitrarily imposes a 6 way election requirement may become prohibitive and thereby contravene the constitutional purpose to promote and encourage the progress of science in the useful arts.

Withdrawal of the restriction requirement is respectfully requested.

Should the Restriction Requirement not be withdrawn, Applicants hereby, as required, elect Group (b) analogue derivative of VIP (claims 2, 5, 8, 10, 12) to be further examined. This election is made with traverse.

Reconsideration and allowance of the present application is respectfully requested.

Applicant hereby reserves the right to rejoin the species in the application and/or file one or more divisional applications directed to the non-elected subject matter of this application. *In re Ochiai*, 24 U.S.P.Q2d, 1265 (B.P.A.I. 1992), *rev'd*, 71 F.3d 1565, 37 U.S.P.Q.2d 1127 (Fed. Cir. 1995).

Thus, in view of the foregoing remarks and amendments, the present application is in condition for allowance, which allowance is earnestly solicited.

Any fee due with this paper may be charged on Deposit Account 50-1290.

Respectfully submitted,

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